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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,091	09/28/2001	Yu Zheng	PAT-1384	6648

7590  
Raymond Sun  
12420 Woodhall Way  
Tustin, CA 92782

09/22/2003

EXAMINER

FRANCIS, FAYE

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 09/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/967,091

Applicant(s)

ZHENG, YU

Examiner

Faye Francis

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: proper antecedent basis should be provided in the specification for the requirement in claims 29 and 31 that the air is retained inside the body at all times during use of the apparatus. No new matter should be entered into the application. But see below.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 29 and 31 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, i.e., New Matter.

The specification as originally filed does not provide support for the teaching of "wherein air is retained inside the body at all times during use of the apparatus " as now recited in claims 29 and 31. Applicant is required to cancel the new matter in the response to this office action.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 4, 6 and 8 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson [2,763,958], hereinafter Lemelson.

Lemelson discloses in Figs 1-2 (also see attachment at the end of this Office Action wherein the letter A has been added by the examiner), an inflatable toy apparatus, comprising: an inflatable elongated body 10, a nose piece [weight 28] and a plurality of curved tails [fins 25 and nozzle 11] as recited in claims 1 and 4. Additionally, Lemelson discloses a tailpiece [pressure-sensitive tape 27] as recited in claim 6 and a gripping piece A as recited in claim 8.

6. Claims 1, 3-4, 7 and 28-31 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Goldfarb.

Goldfarb discloses in Figs 1-4, an inflatable toy apparatus, comprising: an inflatable elongated body 10, a nose piece [cork 28] and a plurality of curved tails [fins 16-17 and 19-20] as recited in claims 1 and 4. Additionally, Goldfarb discloses the tails are made from a material that is the same as that of the elongated body [col 2 lines 4-6] as recited in claim 3 and a nozzle 13 as recited in claims 28 and 30.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson.

Lemelson discloses most of the element of this claim as stated above but for the tails are made from a material that is the same as that of the elongated body. It would have been obvious to make the tails in the device of Lemelson from a material that is the same as that of the elongated body in order to reduce the manufacturing cost.

8. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and further in view of Pippin Jr, hereinafter Pippin.

Lemelson discloses most of the element of this claim as stated above but does not disclose a plurality of winglets provided on the nosepiece.

Pippin recognizes a toy missile/rocket including a plurality of winglets [stabilizing fins 39] provided on the nosepiece. It would have been obvious, in view of Pippin provide the nosepiece of Lemelson device with a plurality of winglets for aerodynamic purposes and to make the device more realistic and more enjoyable for the children to play with.

9. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Goldfarb and further in view of Pippin.

Goldfarb discloses most of the element of this claim as stated above but does not disclose a plurality of winglets provided on the nosepiece.

Pippin recognizes a toy missile/rocket including a plurality of winglets [stabilizing fins 39] provided on the nosepiece. It would have been obvious, in view of Pippin provide the nosepiece of Goldfarb device with a plurality of winglets for aerodynamic purposes and to make the device more realistic and more enjoyable for the children to play with.

10. Claim 9 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Benson alone, or Benson in view of Goldfarb.

Benson discloses in Figs 1-12, an inflatable toy apparatus, comprising: an inflatable elongated body 10, a nosepiece 24 and a tail construction/assembly [fins 14 and nozzle 11] having a hollow cylindrical tube [nozzle 11].

Benson may not disclose that the nosepiece is made from a material that is different from that of the elongated body. It would have been obvious to make the nosepiece in the device of Benson from a material that is different of the elongated body in order to increase durability.

Goldfarb teaches the concept of providing an inflatable toy apparatus having a nosepiece [cork 28] that is made from a material that is different from that of the elongated body. It would have been obvious to make the nosepiece in the device of Benson from a material that is different of the elongated body in order to increase durability.

11. Claim 9 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson as applied to claims 1-2, 4, 6 and 8 above, and further in view of Benson.

Lemelson discloses most of the element of this claim as stated above but does not disclose a tail assembly having a hollow cylindrical tube.

Benson teaches the concept of providing an inflatable toy with a tail construction/assembly [fins 14 and nozzle 11] having a hollow cylindrical tube [nozzle 12]. It would have been obvious, in view of Benson to construct the tail of Lemelson device with a tail construction/assembly having a hollow cylindrical tube in order to inflate the toy.

#### ***Response to Arguments***

13. Applicant's arguments with respect to claims 1-9 and 28-31 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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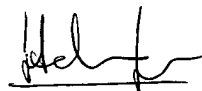
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

FF  
September 11, 2003

  
Sharon K. Ashkan  
Patent Examiner

Sept. 25, 1956

J. H. LEMELSON  
INFLATED AERIAL TOY  
Filed May 22, 1953

2,763,958

FIG-1

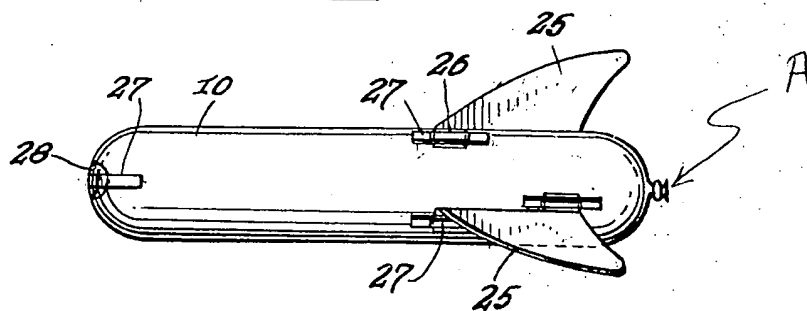
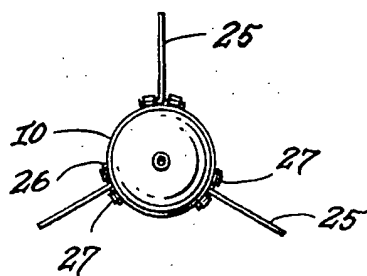


FIG-2



INVENTOR.  
JEROME H. LEMELSON.